



USDC SD

## U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

June 13, 2022

**BY ECF**

The Honorable Colleen McMahon  
United States District Judge  
500 Pearl Street  
New York, NY 10007

Re: *Knight Institute v. Central Intelligence Agency, et al.*, 22 Civ. 1542 (CM)

Dear Judge McMahon:

MEMO ENDORSED

OK  
request granted  
conference adjourned  
Colleen McMahon

This Office represents the defendant agencies in this Freedom of Information Act (FOIA) case. I write jointly with plaintiff in advance of the scheduled initial conference to (1) provide an update on the agencies' searches and processing; (2) request that the conference be adjourned without date; and (3) propose a further status report by July 11, 2022.

**Initial conference; scheduling proposal.** The Court's March 7, 2022 order scheduling an initial conference, ECF No. 19, directs the parties to, among other things, submit a proposed case management plan containing proposed discovery dates. However, this FOIA action will likely be resolved through cross-motions for summary judgment based on legal argument and factual matter provided by declarations, without discovery. *See, e.g., Wood v. Fed. Bureau of Investigation*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. Dep't of Just.*, 19 F.3d 807, 812-13 (2d Cir. 1994). We therefore respectfully request that we be relieved of this obligation.

Instead, the parties have conferred about a proposed timeline for the two key matters in the case—the agencies' searches for potentially responsive records, and processing such records for responsiveness and exemptions. An agency-by-agency summary is given below.

**Glomar responses.** Four agencies—the National Security Agency, the Central Intelligence Agency, the Office of the Director of National Intelligence, and the Drug Enforcement Administration—have made a complete Glomar response to plaintiff's request, because they have determined that the fact of whether or not they possess any responsive records is itself exempt. Because they have made a Glomar response, no search or processing is needed at this time. *See generally Conti v. U.S. Dep't of Homeland Sec.*, No. 12 Civ. 5827 (AT), 2014 WL 1274517, at \*24 (S.D.N.Y. Mar. 24, 2014). Plaintiff reserves its right to challenge these Glomar responses at an appropriate time. The parties agree that, if necessary, litigation over the Glomar responses would most efficiently be conducted once all agencies have completed processing.

**FBI.** The Federal Bureau of Investigation has completed its search, and is currently processing the results, which are approximately 1500 pages of potentially responsive records.



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The FBI has agreed to complete processing of all potentially responsive records in this action by August 31, 2022. In addition, the FBI has agreed that, to the extent that, prior to August 31, (1) it makes a release of records to the New York Times in a separate FOIA case concerning NSO Group—*N.Y. Times & Mazzetti v. DOJ*, 22 Civ. 1539 (JSR)—and (2) the records are also responsive to the request here, the FBI will make a simultaneous release of such records to plaintiff.

**DOJ components.** DOJ's Office of Legal Counsel has completed its searches, and has not located any potentially responsive records.

DOJ's National Security Division has completed its searches, and has located approximately 95 pages of potentially responsive records, which may include some duplicates. NSD intends to process these records for its own equities by the end of this month. However, these records will require further consultation or coordination with other agencies or components. NSD will work with any other agencies to complete consultation or coordination and make a single release of any responsive, non-exempt portions to plaintiff by August 31, 2022.

DOJ's Criminal Division has completed its initial searches, and has identified custodians whose individual files must now be searched. By June 30, CRM will provide an end date for completing these searches, and the parties will then confer about next steps.

DOJ's Office of Information Policy has completed its initial searches, and has located a significant volume of potentially responsive items requiring review for responsiveness. OIP anticipates completing its initial responsiveness review during the week of July 5–8. Once complete, OIP will inform plaintiff of the approximate number of pages of records remaining after the initial responsiveness review, and the parties will confer about a processing schedule.

**Army.** The parties have conferred, and determined that the Army was not the correct recipient of the FOIA request. The government has discussed the request with the apparently correct recipient—U.S. Africa Command (“AFRICOM”), a component of the Department of Defense. AFRICOM recently conducted a search for records responsive to a similar FOIA request and returned no responsive records. Plaintiff has therefore agreed to dismiss the Army voluntarily from this action, and does not intend to make a further duplicative request to AFRICOM.

**Proposed July 11 status report.** Because the parties have discussed these matters productively, we do not believe an initial conference is necessary at this time. Instead, we propose providing the Court a status report by July 11. The status report will address, at a minimum, the status of the Criminal Division's searches and OIP's responsiveness review, as well as any proposals for next steps regarding these two components.

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We thank the Court for its attention to this matter.

Respectfully submitted,

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